

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

██████████

Appellant

Docket No. 2012-28778 HHS
Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. The Appellant appeared, represented himself and testified. ██████████ translated the proceedings from English to Arabic and from Arabic to English. ██████████, Appeals Review Officer, represented the Department of Community Health (Department). ██████████, Adult Services Worker, testified for the Department.

ISSUE

Did the Department properly terminate the Appellant's Home Help Services (HHS) payments?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Appellant is a Medicaid beneficiary who resides in his ██████████ apartment.
2. The Appellant has been diagnosed with arthritis, hematuria, kidney and gallstones, back pain, and asthma.
3. The Appellant was approved for and is receiving Home Help Services (HHS) for assistance with his Instrumental Activities of Daily Living (IADLs) of housework, laundry, shopping, and meal preparation.
4. On ██████████ the Appellant's Adult Services Worker, ██████████, went to the Appellant's apartment and completed an in-home assessment with the Appellant. During the assessment, the Appellant told

██████████ that he still has physical limitations due to his diagnosed conditions and reported that there was no change in the services provided by his HHS provider.

5. On ██████████ ██████████ concluded that the Appellant was physically able to perform all Activities of Daily Living (ADLs) and did not require hands on assistance.
6. On ██████████ ██████████ sent the Appellant an Advance Action Notice which informed the Appellant that effective ██████████, the Appellant's HHS would be terminated.
7. On ██████████, the Michigan Administrative Hearing System received the Appellant's request for hearing.

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Home Help Services (HHS) are provided to enable functionally limited individuals to live independently and receive care in the least restrictive, preferred settings. These activities must be certified by a physician and may be provided by individuals or by private or public agencies.

The Department of Community Health HHS Medicaid policy is found in the Department of Human Services Adult Services Manual (ASM) at ASM 100- 170. The Department of Human Services issued Interim Policy Bulletin ASB 2011-001 with an effective date of October 1, 2011. This Interim Policy limits HHS eligibility for Medicaid beneficiaries with a medical need for assistance with one or more ADLs at a ranking of 3 or higher. On January 1, 2012, the Department of Human Services issued Adult Services Manual 120 which incorporated the provisions of Interim Policy Bulletin ASB 2011-001.

ASM 120, page 1-3 provides that HHS policy for comprehensive assessments. ASM 120 provides in pertinent part:

INTRODUCTION

The DHS-324, Adult Services Comprehensive Assessment is the primary tool for determining need for services. The comprehensive assessment must be completed on **all open independent living services cases**. ASCAP, the automated workload management system, provides the

format for the comprehensive assessment and all information must be entered on the computer program.

Requirements

Requirements for the comprehensive assessment include, but are not limited to:

- A comprehensive assessment will be completed on all new cases.
- A face-to-face contact is required with the client in his/her place of residence.
- The assessment may also include an interview with the individual who will be providing home help services.
- A new face-to-face assessment is required if there is a request for an increase in services before payment is authorized.
- A face-to-face assessment is required on all transfer-in cases before a payment is authorized.
- The assessment must be updated as often as necessary, but minimally at the six month review and annual redetermination.
- A release of information must be obtained when requesting documentation from confidential sources and/or sharing information from the department record.
 - Use the DHS-27, Authorization To Release Information, when requesting client information from another agency.
 - Use the DHS-1555, Authorization to Release Protected Health Information, if requesting additional medical documentation; see RFF 1555. This form is primarily used for APS cases.
- Follow rules of confidentiality when home help cases have companion adult protective services cases; see SRM 131, Confidentiality.

Functional Assessment

The **Functional Assessment** module of the **ASCAP** comprehensive assessment is the basis for service planning and for the home help services payment.

Conduct a functional assessment to determine the client's ability to perform the following activities:

Activities of Daily Living (ADL)

- Eating.
- Toileting.
- Bathing.
- Grooming.
- Dressing.
- Transferring.
- Mobility.

Instrumental Activities of Daily Living (IADL)

- Taking Medication.
- Meal preparation and cleanup.
- Shopping.
- Laundry.
- Light housework

Functional Scale

ADLs and IADLs are assessed according to the following five point scale:

1. Independent.
Performs the activity safely with no human assistance.
2. Verbal assistance.
Performs the activity with verbal assistance such as reminding, guiding or encouraging.
- 3 Some human assistance.
Performs the activity with some direct physical assistance and/or assistive technology.
4. Much human assistance.
Performs the activity with a great deal of human assistance and/or assistive technology.
5. Dependent.
Does not perform the activity

Home help payments may only be authorized for needs assessed at the level 3 ranking or greater. An individual must be assessed with at least one activity of daily living in order to be eligible to receive home help services.

Note: If the assessment determines a need for an ADL at a level 3 or greater but these services are not paid for by the department, the individual would be eligible to receive IADL services.

See ASM 121, Functional Assessment Definitions and Ranks for a description of the rankings for activities of daily living and instrumental activities of daily living.

Complex Care

Complex care refers to conditions requiring intervention with special Needs techniques and/or knowledge. These complex care tasks are performed on client's whose diagnoses or conditions require more management. The conditions may also require special treatment and equipment for which specific instructions by a health professional or client may be required in order to perform.

- Eating and feeding.
- Catheters or legs bags.
- Colostomy care.
- Bowel program.
- Suctioning.
- Specialized skin care.
- Range of motion exercises.
- Peritoneal dialysis.
- Wound care.
- Respiratory treatment.
- Ventilators.
- Injections.

When assessing a client with complex care needs, refer to the complex care guidelines on the adult services home page.

Time and Task

The specialist will allocate time for each task assessed a rank of 3 or higher, based on interviews with the client and provider, observation of the client's abilities and use of the

reasonable time schedule (RTS) as a **guide**. The RTS can be found in ASCAP under the Payment module, Time and Task screen. When hours exceed the RTS, rationale **must** be provided.

An assessment of need, at a ranking of 3 or higher, does not automatically guarantee the maximum allotted time allowed by the reasonable time schedule (RTS). **The specialist must assess each task according to the actual time required for its completion.**

IADL Maximum

There are monthly maximum hour limits on all instrumental activities Allowable Hours of daily living except medication. The limits are as follows:

- Five hours/month for shopping.
- Six hours/month for light housework.
- Seven hours/month for laundry.
- 25 hours/month for meal preparation.

Proration of IADLs

If the client does not require the maximum allowable hours for IADLs authorize only the amount of time needed for each task. Assessed hours for IADLs (except medications) must be prorated by **one half** in shared living arrangements where other adults reside in the home, as home help services are **only** for the benefit of the client.

Note: This does not include situations where others live in adjoining apartments/flats or in a separate home on shared property and there is no shared, common living area. In shared living arrangements, where it can be **clearly** documented that IADLs for the eligible client are completed separately from others in the home, hours for IADLs do not need to be prorated.

Responsible

Activities of daily living may be approved when the responsible Relative relative is **unavailable** or **unable** to provide these services.

Note: Unavailable means absence from the home for an extended period due to employment, school or other legitimate reasons. The responsible relative must provide a

work or school schedule to verify they are unavailable to provide care. **Unable** means the responsible person has disabilities of their own which prevent them from providing care. These disabilities must be documented/verified by a medical professional on the DHS-54A, Medical Needs form.

Legal

Do **not** approve shopping, laundry, or light housecleaning, when a Dependent responsible relative of the client resides in the home, **unless** they are unavailable or unable to provide these services. Document findings in the general narrative in ASCAP.

Do **not** approve shopping, laundry or light housecleaning, when a legal dependent of the client (minors 15-17) resides in the home, **unless** they are unavailable or unable to provide these services.

Expanded Home

Expanded home help services exists if all basic **Help Services** eligibility criteria are met and the assessment indicates (**EHHS**) the client's needs are so extensive that the cost of care cannot be met within the monthly maximum payment level of \$549.99.

Michigan

When the client's cost of care exceeds \$1299.99 for any reason, Department of the adult services specialist must submit a written request for Community approval to the Michigan Department of Community Health (MDCH).

Health Approvals

Follow the **Procedures for Submitting Expanded Home Help Requests** found on the Adult Services Home Page. Submit the request with all required documentation to:

Michigan Department of Community Health
Long Term Care Services Policy Section
Capital Commons Building, 6th Floor
P.O. Box 30479
Lansing, MI 48909

MDCH will provide written documentation (DCH-1785) of approval. A new request **must** be submitted to the Michigan Department of Community Health whenever there is an

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increase in the cost of care amount. A new request is **not** require if the cost of care decreases below the approved amount set by MDCH.

Note: If an expanded home help case closes and reopens within 90 days and the care cost remains the same, a new MDCH approval is **not** required.

ASM 120, pp 1-3

The evidence presented shows that the Appellant was approved for \$180.60 per month of HHS for assistance with housework, laundry, meal preparation, and shopping. The evidence also shows that on ██████████, the Appellant's Adult Services Worker, ██████████ conducted a face-to-face home visit with the Appellant and the Appellant's provider. ██████████ testified that based on the information provided by the Appellant, by the Appellant's provider, and ██████████ observations, she concluded that the Appellant did not require hands on assistance with ADLs.

██████████ testified that the Appellant's previously approved HHS included no payments for ADL care. ██████████ testified that during her assessment the Appellant, through his provider, told ██████████ that he continued to need assistance with IADLs. Ms. Ash testified that during her in-home assessment the Appellant told her that there was no change in his need for HHS. ██████████ testified that the Appellant did not tell her at that time he needed assistance with bathing. ██████████ testified that after the Appellant received a negative action notice indicating his services would be terminated the Appellant indicated he needed assistance with bathing.

The Appellant testified that he needs assistance with bathing and his IADLs. The Appellant testified that his HHS provider assists him with bathing by helping him in and out of the shower three times per week. The Appellant testified that he has a shower chair but is often very dizzy and needs assistance in and out of the shower. In addition the Appellant testified that he has a back condition and back pain that prevents him from bathing. The Appellant testified that he needs assistance with his ADL of bathing and with his IADLs and would like his HHS continued.

██████████ testified that she reviewed the Appellant's case file and provider logs at the hearing and could not find any logs which indicated that the provider was providing assistance with bathing. ██████████ testified that during the assessment the Appellant and the Appellant's provider told ██████████ there was no change in his need for HHS. ██████████ testified that the Appellant did not indicate that he needed assistance with bathing until after he was notified that his HHS would be terminated. ██████████ testified that the Appellant provided a new DHS 54-A in which the Appellant's physician indicates that the Appellant requires assistance with bathing but the Appellant's diagnosed conditions are not consistent with a person who would required assistance with bathing. ██████████ testified that she terminated the Appellant's HHS because the October 1, 2011, policy

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change requires a termination when a HHS client requires no hands on assistance with ADLs. [REDACTED] testified that she could not approve the Appellant for IADLs because the Appellant did not have a medical need for hands on assistance with any ADL at a level 3 or higher.

The evidence presented shows that the Appellant's [REDACTED] HHS assessment found that the Appellant had no medical need for hands on assistance with his ADLs. The evidence also shows that in [REDACTED], [REDACTED] completed a face-to-face HHS assessment and properly concluded that the Appellant did not require hands on assistance with his ADLs. The evidence provided by the Appellant's physician shows that the Appellant has back pain but no physically limiting condition is listed which would limit the Appellant's ability to independently complete his ADLs including bathing. Also the evidence presented shows that the Appellant was not approved for nor was he receiving HHS for assistance with the Appellant's ADLs for the year before the Appellant's [REDACTED] assessment. This is further evidence that the Appellant has the physical ability to perform his ADLs without hands on assistance.

Therefore, based on evidence presented and the October 1, 2011, change in DHS policy, I find that [REDACTED] properly terminated the Appellant's HHS.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly determined that the Appellant was ineligible for HHS and properly terminated the Appellant's Home Help Services.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Martin D. Snider
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 5/4/2012

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***** NOTICE *****

The Michigan Administrative Hearing System may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The Michigan Administrative Hearing System will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant March appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.